

## Appeal Decision

Site visit made on 19 April 2017

by **D J Board BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2017

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**Appeal Ref: APP/A2280/W/16/3166157**

**Medway Bridge Marina, Manor Lane, Borstal, Rochester, ME1 3HS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Giles Billingsley against the decision of The Medway Council.
  - The application Ref MC/15/2332, dated 1 July 2015, was refused by notice dated 30 June 2016.
  - The development proposed is described as 'resubmission of planning application MC/14/3680 – residential development'.
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### Decision

1. The appeal is allowed and planning permission is granted for resubmission of planning application MC/14/3680 – residential development at Medway Bridge Marina, Manor Lane, Borstal, Rochester, ME1 3HS in accordance with the terms of the application, Ref MC/15/2332, dated 1 July 2015, subject to the conditions in Annex A.

### Procedural Matters

2. The application was made in outline form with all matters reserved for future consideration except for access. Therefore the plans showing layout and possible external appearance details are illustrative only. The appeal is considered on this basis.

### Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

4. The site would be formed from an area of land currently within Medway Bridge Marina. It would face the River Medway and sit within an area where the character of residential development is mixed in terms of both appearance and scale. The marina itself is relatively flat but the housing beyond it to the south sits on higher land.
  5. As detailed above the submitted plans are illustrative. However, they have been provided to demonstrate how the scheme could be accommodated onto the site. In particular that the number of units could be provided within buildings of an appropriate scale. It is clear that in order to provide 36 units
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the buildings along the river frontage would be up to five storey in height with those behind being up to three storey.

6. The Council has not explicitly objected to the garden space or parking arrangements. However, the decision notice refers to the scheme being 'overdevelopment'. In addition to the issue of amount and scale the indicative plans also demonstrate that garden areas and parking arrangements could be made on site. In terms of appearance a number of scenarios have been provided. None of these are binding at this stage. Nevertheless, they serve to demonstrate that the use of a simple stepped approach and carefully chosen materials a well-proportioned building could be designed for the site.
7. Overall, the illustrative information demonstrates that the buildings could be arranged to sit comfortably in the street and river scape. The buildings would sit against the backdrop of housing to the south on higher land. In addition the presence of existing trees would serve to lessen the visual impact of new buildings when viewed from a distance. Furthermore, whilst it would be a reserved matter, landscaping proposals could be used to integrate the scheme into the area.
8. I therefore conclude that the proposal would not harm the character and appearance of the area. It would not be in conflict with policies H4 and BNE1 Medway Local Plan and paragraphs 56, 57, 58, 61 and 65 of the National Planning Policy Framework (the Framework) which amongst other things seek to resist development that is a poor design, fails to respond to the character of the area in which it is located and does not respect the scale, appearance and location of buildings in the surrounding area.

#### *Other matters*

9. The Council's committee report indicated that there were a number of contributions that were required to be made. The appellant agreed to these in submitted heads of terms and has subsequently submitted a signed and dated unilateral undertaking.
10. Whilst not reasons for refusal raised by the Council I have carefully considered the additional concerns raised by third parties regarding floodrisk, loss of light and privacy, noise, pressure on services, traffic and access and congestion during construction.
11. The Environment Agency has confirmed that it no longer objects to the scheme subject to the imposition of appropriate conditions. I have no reason to disagree. The illustrative plans demonstrate that the building could be located to provide adequate distances between it and surrounding development such that at reserved matter stage issues relating to privacy and light can be satisfactorily addressed. The indicative information demonstrates that the scheme could accommodate parking on site and the officer report is clear that the level of movements would not have a severe highway impact. I have no substantive information that would lead me to a different conclusion. The planning obligations relate to key services and seek to make additional provision or improve facilities close to the site. The matter of managing access during construction can be managed through an appropriate condition.

## **Conditions**

12. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Framework and Planning Practice Guidance and for clarity some of the proposed wording is amended. Conditions are necessary that relate to the standard time limits and the submission of reserved matters.
13. The materials condition is not necessary at this stage as it relates to the reserved matter of appearance and can be controlled at that stage. To ensure proper drainage of the site conditions relating to surface water and foul drainage strategies are also necessary. In the interests of highway safety conditions requiring the provision of details of the pedestrian and vehicle access within the reserved matters submission would be reasonable and necessary. In the interests of protected species conditions are necessary to ensure that the appropriate mitigation would be carried out.
14. To protect the living conditions of near neighbours conditions to require details of external lighting and construction works would be necessary. Conditions would also be necessary to ensure that adequate measures for dealing with contamination are in place, archaeological mitigation is undertaken and that detail of refuse storage is submitted at reserved matters stage.
15. The Environment Agency did not object subject to conditions. These conditions are reasonable and necessary and require the submission of additional flood risk information. A condition relating to the acoustic specification of the final design is necessary.

## **Conclusion**

16. For the above reasons and having regard to all other matters raised I conclude that subject to the conditions in Annex A the appeal should be allowed.

*D J Board*  
INSPECTOR

## **Annex A – Conditions**

- 1) Approval of the details of the layout, scale and appearance of the buildings and the landscaping (hereinafter called “the reserved matters”) shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 2) Plans and particulars of the reserved matters referred to in Condition 1 above shall be submitted in writing to the Local Planning Authority for approval. Such application for approval shall be made to the Authority before the expiration of three years from the date of this permission and the reserved matters shall be carried out in accordance with the approved details.
- 3) The development to which this permission relates must be begun no later than the expiration of 2 years from the final approval of the reserved matters or in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Drawing Number: BKE15987-01 received on 2 July 2015
  - Drawing Number: 202/13/04 Revision C; and un-numbered drawing of a cross-section through the site prepared by the Omega Partnership received 5 November 2015.
- 5) No development approved by this permission shall be commenced until a scheme for the disposal of foul and surface waters have been submitted to and approved in writing by the Local Planning Authority following consultation with both the Environment Agency and Southern Water. Thereafter the development shall only be implemented in accordance with the details approved pursuant to this condition, to the reasonable satisfaction of the Local Planning Authority.
- 6) Notwithstanding the submitted plans and documentation, surface water drainage from the development site shall not be discharged to soakaways
- 7) No development approved by this permission shall be commenced until full details of the measures to be undertaken in the diversion of the public sewers have been submitted to and approved in writing by the Local Planning Authority following consultation with Southern Water. Thereafter the development shall only be implemented in accordance with the details approved pursuant to this condition, to the reasonable satisfaction of the Local Planning Authority.
- 8) No development shall commence until:
  - a) A desktop study has been carried out which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. And using this information a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors has been produced.

- b) A site investigation has been designed for the site using the information obtained from the desktop study and any diagrammatical representations (Conceptual Model).

This shall be submitted to, and approved in writing by the Local Planning Authority (LPA) prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:

- a risk assessment to be undertaken relating to groundwater and surface waters associated on and off the site that may be affected; and
  - refinement of the Conceptual Model; and
  - The development of a Method Statement detailing the remediation requirements.
- c) The site investigation has been undertaken in accordance with details approved by the LPA and a risk assessment has been undertaken.
- d) A Method Statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters, using the information obtained from the Site Investigation has been submitted to the LPA. This should be approved in writing by the LPA prior to that remediation being carried out on the site.

The development of the site shall be carried out in accordance with the approved Method Statement

- 9) No occupation of any part of the development of each phase of development shall take place until a Verification Report demonstrating completion of works set out in the approved Remediation Strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 10) Prior to the commencement of the development, full details of the gas monitoring results that were omitted from the Contaminated Land – Desk Study Report undertaken by Geo-Environmental Services Ltd (Report Reference GE9823/DSR/APR14 – Final) received on 2 July 2016, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall only be implemented in accordance with the details approved pursuant to this condition and thereafter maintained.
- 11) Prior to the commencement of the development, further gas monitoring shall be undertaken in accordance with the recommendations set out in the Contaminated Land – Desk Study Report undertaken by Geo-Environmental Services Ltd (Report Reference GE9823/DSR/APR14 – Final) (see Bullet point 5, Table 2, paragraph 2.11) received 2 July 2016. The results of that gas monitoring, together with any remediation measures

required as a result of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to any element of this development, as approved, commencing on site. The gas monitoring and remediation measures report, referred to above shall take into account and includes references to the CIRIA guidance 'Assessing risks posed by hazardous gases to buildings'. Thereafter the development, as approved, shall only be implemented in accordance with the details approved pursuant to this condition and thereafter maintained.

- 12) If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the LPA) shall be carried out until the developer has submitted, and obtained written approval from the LPA, for an addendum to the Method Statement. This addendum to the Method Statement must detail how this unsuspected contamination shall be dealt with and from the date of approval the addendum(s) shall form part of the Method Statement.
- 13) Details to be submitted pursuant to conditions 1 and 2 for the approval of reserved matters for a phase or sub-phase of the development shall include full details of an Acoustic Assessment shall be undertaken to determine the impact of noise from transport-related sources and shall be made in accordance with BS8233 2014: Guidance on Sound Insulation and Noise Reduction for Buildings. The results of the assessment and details of a scheme of acoustic protection shall be submitted and approved in writing by the Local Planning Authority. The scheme shall include details of acoustic protection sufficient to ensure internal noise levels (LAeq,T) no greater than 30dB in bedrooms and 35dB in living rooms with windows closed and a maximum noise level (LAm<sub>ax</sub>) of no more than 45dB(A) with windows closed. Where the internal noise levels will be exceeded with windows open, the scheme shall incorporate appropriate acoustically screened mechanical ventilation. The scheme shall include details of acoustic protection sufficient to ensure amenity/garden noise levels of not more than 55dB (LAeq,T). All works, which form part of the approved scheme, shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.
- 14) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Specification and timetable which has been submitted to and approved by the Local Planning Authority. Works shall be carried out in accordance with the approved Specification and timetable.
- 15) Details to be submitted pursuant to conditions 1 and 2 for the approval of reserved matters for a phase or sub-phase of the development shall include full details of the method for piling foundations, foundations designs and any other proposals involving below ground excavation within that phase or sub-phase. These details shall demonstrate that there is no resultant unacceptable risk to groundwater and should be in accordance with Environment Agency guidance; Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention and Piling into Contaminated Sites. The development within any

phase or sub-phase shall only be carried out in accordance with the details approved in writing pursuant to the reserved matters submission, in relation to the method for piling foundations, foundations designs and any other proposals involving below ground excavation for the relevant phase or sub-phase to which it relates. No piling or other below ground excavation shall take place other, than as approved pursuant to the method for piling foundations, foundations designs and any other proposals involving below ground excavation agreed pursuant to the reserved matters approval for that phase or sub-phase of the development.

- 16) The details submitted pursuant to condition 01 shall include existing and proposed site levels, including cross sections of the proposed development through the site of that phase or sub-phase of the development. The development shall be undertaken in accordance with the approved details and maintained thereafter.
- 17) No development shall be commenced until such time a Site Management/Clearance Plan has been submitted to and approved in writing by the Local Planning Authority. The Site Management/Clearance Plan shall incorporate measure to avoid any demolition, re-development or new development within the bird nesting/bird-breeding season. The details as approved must be implemented and maintained for the duration of the construction phase of the development.
- 18) Prior to commencement of development for each phase or sub-phase of the development, a Construction Code of Practice (CoCP) shall be submitted and approved in writing by the Local Planning Authority. The CoCP for each phase or sub-phase of the development shall include:
  - a) Details of the sustainability of the construction process including recycling and re-use of construction and demolition waste;
  - b) Details of measures to mitigate the impact of the construction process on ecology, biodiversity and the wider landscape;
  - c) Details of hours of working, noise controls and dust suppression;
  - d) Details of construction traffic routing and other measures to minimise the impact of the construction process on the local highway network;
  - e) Details of mitigation measures for any other significant impact likely to arise as part of the construction process;
  - f) Measures to protect highway network from mud and debris from construction; and
  - g) Traffic routing of construction vehicles.

For the sake of clarity the CoCP shall include the demolition aspects of the development.

The development shall thereafter be undertaken in accordance with the approved Code of Practice.

- 19) The Reserved Matters application for details of layout shall be supported by a full Flood Risk Assessment, which shall provide details and confirmation of:
  - The layout and scale of the development;
  - Finished ground floor levels, which must be above the modelled tidal flood levels provided;

- Underground parking areas, the entrance for which should be above the flood levels provided in order to prevent inundation during a flood event;
- Access arrangements to and from the site, which should be dry and accessible to all users / residents.

The Flood Risk Assessment shall be implemented in full in accordance with the approved details, prior to the first occupation of any part of the development, hereby approved and thereafter maintained.

- 20) The details to be submitted with the reserved matters application relating to layout shall include details of all proposed external lighting. Such details must take into consideration amenity and light pollution along with ecology, especially with regard to Bat Conservation Trust's "Bats and lighting in the UK" guidance. No other external lighting shall be installed on site other than that approved pursuant to this condition or subsequently approved in writing by the Local Planning Authority
- 21) The details to be submitted with the reserved matters application relating to layout shall include the refuse storage arrangements, including provision for recyclable materials. No unit shall be occupied until the approved refuse storage arrangements to serve that unit have been provided in accordance with the approved details and they shall thereafter be retained.
- 22) Prior to the commencement of the development, a scheme and timetable for implementation for the mitigation and conservation as set out in Paragraphs 5.5.1, 5.5.2, 6.5.5 and 7.9 of the ecological report, dated April 2007 by Aspect Ecology and the Aspect Ecology letter (ref: ECO1264/LKW/005.let.fee.LPA) dated 7th April 2015 (both received on 2 July 2015), in the form of landscaping details, bird boxes and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. The details, measures and timetable, as approved, shall be implemented in accordance with the approved details and thereafter maintained.
- 23) Reserved Matters details to be submitted pursuant to condition 2 of this decision notice shall include:
- A) The retention of the hedgerows and trees located on the south-eastern, southern and south-western boundaries of the site and where possible details additional native hedgerows to be planted along this boundary of the site; and
  - B) Full details of all other landscaping and shall show the retention of all trees and hedgerows within and along the boundary of the site, or full justification for their loss in a Tree Survey.
- 24) No scrub or vegetation clearance required by the development shall take place on the site, including the creation of the new access, during the bird breeding season (the months of March through to August (inclusive)), unless the site has been surveyed, by a suitably qualified ecologist, immediately prior to the vegetation or scrub clearance and the ecologist confirms provides a written confirmation of their findings which are agreed in



writing by the Local Planning Authority. Should any bird breeding be recorded on site during the constructions works, then all works must cease within that area of the site, until the bird breeding recorded ceases or an appropriately qualified ecologist provides sufficient evidence that is agreed in writing by the Local Planning Authority that the site clearance can recommence prior to the closure of the bird breeding season.

25) The details to be submitted with the reserved matters application relating to layout shall include full details of the proposed pedestrian access to the site. The approved pedestrian access shall be provided prior to first occupation of any part of the development and shall thereafter be maintained.

26) Details to be submitted pursuant to condition 2 for the approval of reserved matters shall within layout design include track diagrams demonstrating that the development is accessible by larger vehicles, such as delivery / removal vehicles and refuse vehicles.

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